IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1204 OF 1993

Madhukar Bhaskar Gupta .... Petitioner.
residing at Ashirwad bldg,
Plot No.74/AB, Behind plot
No.74, Pandurangwadi,
Goregaon(E),Bombay-63

VERSUS

1.State of Maharashtra
2. The Secretary
Urban Development department,
Mantralaya,Bombay-32.
3.Municipal Corporation of
Gr.Bombay,Mahapalika Marg,
Bombay-1.

Mr.G.R.Rege with Ms S.A.Mudbidri for Petitioner.

Mrs. S.M. Dendekar,A.G.P. for Respondent Nos. 1 and 2.

Mr.Vinod Mahadik for Respondent No.3.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE : 5th September 2005.

ORAL JUDGEMENT (PER R.M.S.KHANDEPARKAR,J.)

1. Heard. The Petitioner challenges the Notification dated 22nd March 1993 whereby the petitioner's plot was reserved for garden and prays for de-reservation of the said plot.

2. The undisputed facts in the matter are that the respondent Nos. 1 and 2 have brought about the changes

in the reservation in relation to the suit plot in exercise of powers vested in them under the Maharashtra Regional and Town Planning Act. It is also undisputed fact that the respondent No.3, i.e. the Municipal Corporation which was, in fact, initially the Planning Authority under the said Act, had specifically recommended exclusion of the area occupied by the petitioner from the reservation of land for garden. However,the respondent Nos. 1 and 2, on the ground that it was not clear to them as to whether there was a proper access available to the bungalow in question and whether there was an approved plan in relation to the bungalow by the Corporation or not, had rejected the recommendations of the Corporation and proceeded to reserve the area for garden purpose. The learned Advocate for the respondents has produced the records of the concerned committee, on whose order the plot in question was sought to be reserved for garden area. Perusal of the said record discloses that the recommendations of the Corporation were rejected on the ground that it was not clear to the Committee whether there was an access available to the bungalow and that the Municipal Corporation had not produced the approved plan in relation to the bungalow. Undisputedly, the Committee did not ascertain as to since

when the bungalow in question was in existence.

Undisputedly, the draft plan was prepared and published for the first time on 30/4/1985. It was not ascertained as to whether the bungalow in question was in existence since prior to 1967. In the background of these facts. it is apparent that the committee did not apply its mind to the fact that whether the bungalow has been constructed without there being a proper access available at the site or not. Being so, merely because there was no material before the Committee, so also availability of the access to the bungalow or absence of approved plan, that by itself can not be a justification to reject the recommendations of the Corporation for deletion of area in the reservation for garden. Apparently, it discloses non application of mind on the part of the Committee and arbitrariness in ordering reservation of area occupied by the petitioner. On this count itself, the impugned notification in relation to an area being reserved for garden needs to be quashed and set aside.

3. For the reasons stated above,therefore, the petition is allowed and the impugned notification to the extent it relates to the suit plot stated to have been

reserved for garden is hereby quashed and set aside.

4. The rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR)

(V.M.KANADE)